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*[Additional Counsel for Defendant
continued on next page]*

*Attorneys for Defendant,
Redwood Capital Management, LLC*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

K.A.,

Plaintiff,

vs.

MINDGEEK S.A.R.L. a foreign entity;
MG FREESITES, LTD., a foreign
entity; MINDGEEK USA
INCORPORATED, a Delaware
corporation; MG PREMIUM LTD, a
foreign entity; MG GLOBAL
ENTERTAINMENT INC., a Delaware
corporation; 9219-1568 QUEBEC, INC.,
a foreign entity; BERND BERGMAIR,
a foreign individual; FERAS ANTOON,
a foreign individual; DAVID
TASSILLO, a foreign individual; VISA
INC., a Delaware corporation;
REDWOOD CAPITAL
MANAGEMENT, LLC, a Delaware
limited liability company; REDWOOD

CASE NO. 2:24-cv-04786-WLH-ADS

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
REDWOOD CAPITAL
MANAGEMENT, LLC'S NOTICE
OF MOTION AND MOTION TO
DISMISS COMPLAINTS IN THE
RELATED CASES**

Date: January 31, 2025
Time: 1:30 p.m.
Place: Courtroom 9B
Judge: Hon. Wesley L. Hsu

Complaint filed: June 7, 2024

[Notice of Motion and Motion to
Dismiss, Memorandum of Points and

1 DOE FUNDS 1-7; COLBECK
2 CAPITAL MANAGEMENT, LLC, a
3 Delaware company, COLBECK DOE
4 FUNDS 1-3,

Defendants.

Authorities in support thereof, and
Declaration of James M. Pearl in support
thereof, filed concurrently herewith]

1 *[Additional Counsel for Defendant continued from caption page]*

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Pursuant to Rule 201 of the Federal Rules of Evidence (“FRE”), Defendant Redwood Capital Management, LLC (“Redwood”), by and through its undersigned counsel, respectfully requests that the Court take judicial notice of the following exhibits in connection with Redwood’s Omnibus Motion to Dismiss Complaints in Related Cases pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (“Motion to Dismiss”).

1. **Exhibit A:** A true and correct copy of a printout of a December 16, 2020 article published by Financial Times, with the headline, “*MindGeek: the secretive owner of Pornhub and RedTube*,” available at <https://www.ft.com/content/b50dc0a4-54a3-4ef6-88e0-3187511a67a2> (Dec. 16, 2020). The article states, “The solution came in 2011, in the form of \$362m in debt from 125 secret investors that — according to one financial backer — included Fortress Investment Group, JPMorgan Chase and Cornell University.”

2. **Exhibit B:** A true and correct copy of a printout of a December 18, 2020 article published by Financial Times, with the headline, “*Robinhood: playing for keeps*,” available at <https://www.ft.com/content/d1f178c9-5ca7-4506-9507-ee93939f8ec3> (Dec. 18, 2020). The article states, “Fast-forward to 2011, when Thylmann secured \$362m in debt from 125 secret investors that — according to one financial backer — included Fortress Investment Group, JPMorgan Chase and Cornell University.”

I. JUDICIAL NOTICE OF EXHIBITS A AND B COMPORTS WITH THE FEDERAL RULES OF EVIDENCE

The Court should take judicial notice of Exhibits A and B because this Request meets the requirements of FRE 201. On a motion to dismiss, “courts must consider the complaint in its entirety, as well as other sources . . . , in particular, documents incorporated into the complaint by reference, and matters of which a court may take

1 judicial notice.”¹ *Webb v. Trader Joe’s Co.*, 999 F.3d 1196, 1201 (9th Cir. 2021)
2 (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)); *see*
3 *also Mullis v. U.S. Bankruptcy Court*, 828 F.2d 1385, 1388 (9th Cir. 1987) (“[F]acts
4 subject to judicial notice may be considered on a motion to dismiss.”) (citation
5 omitted). Pursuant to Federal Rule of Evidence 201, a fact is judicially noticeable
6 whenever it is “not subject to reasonable dispute because it: (1) is generally known
7 within the trial court’s territorial jurisdiction; or (2) can be accurately and readily
8 determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.
9 Evid. 201(b). Courts “must take judicial notice if a party requests it and the court is
10 supplied with the necessary information.” Fed. R. Evid. 201(c)(2).

11 **A. Exhibits A and B are Judicially Noticeable News Articles**
12 **Containing a Judicially Noticeable Fact About MindGeek’s**
13 **Numerous Lenders**

14 Redwood’s request for judicial notice of Exhibits A and B pertains to a widely-
15 known fact published in multiple articles that directly relates to the allegations in the
16 individual Complaints (the “Related Cases”) filed by Plaintiffs A.K., W.P., L.S.,
17 W.L., C.S., S.O., J.C., K.A., N.L., T.C., X.N., N.Y., L.T., and J.L. (collectively,
18 “New Plaintiffs”) concerning the number of lenders to MindGeek.² There is no
19 rational reason to doubt the authenticity of Exhibits A or B, as the addresses for the
20 webpages they were printed from have been provided and can be readily verified.
21 Moreover, courts have held that publications, including news articles, are proper

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23 ¹ “[I]ncorporation-by-reference is a judicially created doctrine that treats certain
24 documents as though they are part of the complaint itself. The doctrine prevents
25 plaintiffs from selecting only portions of documents that support their claims, while
26 omitting portions of those very documents that weaken — or doom — their claims.”
Pino v. Cardone Cap., LLC, No. CV 20-8499-JFW(KSX), 2023 WL 7800138, at *5,
(C.D. Cal. Oct. 4, 2023), *appeal docketed*, No. 23-3512 (9th Cir. Dec. 15, 2023)
(citation omitted).

27 ² As used herein, “MindGeek” collectively refers to defendants MindGeek S.A.R.L.,
28 MG Freesites, Ltd., MindGeek USA Incorporated, MG Premium LTD, MG Global
Entertainment Inc., 9219-1568 Quebec, Inc., and other affiliated entities.

1 subjects of judicial notice because the contents are “capable of accurate and ready
2 determination by resort to sources whose accuracy cannot reasonably be questioned.”
3 *Plevy v. Haggerty*, 38 F. Supp. 2d 816, 821 (C.D. Cal. 1998) (taking judicial notice
4 of news articles when ruling on motion to dismiss); *United States v. Kaczynski*, 443
5 F. App’x 299, 300 (9th Cir. 2011) (judicially noticing an auction date from an online
6 newspaper article). Indeed, “it is not uncommon for courts to take judicial notice of
7 factual information found on the world wide web.” *Turner v. Samsung Telecomms.*
8 *Am., LLC*, No. CV 13-00629-MWF (VBKx), 2013 WL 12126749, at *2 (C.D. Cal.
9 Nov. 4, 2013) (citation omitted). Thus, because Redwood requests that the Court
10 take judicial notice of facts that “can be accurately and readily determined from
11 sources whose accuracy cannot be reasonably questioned,” and has “supplied [the
12 Court] with the necessary information[,]” the Court should grant Redwood’s Request
13 as to Exhibits A and B. *See* Fed. R. Evid. 201.

14 In addition, the Court should take judicial notice of Exhibits A, and B because
15 these documents contradict allegations made in the Related Cases. In *Sprewell v.*
16 *Golden State Warriors*, 266 F.3d 979 (9th Cir. 2001), the Court expressed that courts
17 sitting in the Ninth Circuit are ““not required to accept as true [Plaintiff’s] conclusory
18 allegations which are contradicted by documents referred to in the complaint”” or
19 “that contradict matters properly subject to judicial notice[.]” *Id.* at 988 (citation
20 omitted). Accordingly, courts have taken judicial notice of online documents that
21 contradict plaintiffs’ allegations. *See, e.g., Datel Holdings Ltd. v. Microsoft Corp.*,
22 712 F. Supp. 2d 974, 983-84 (N.D. Cal. 2010) (taking judicial notice of online
23 documents upon which a plaintiff’s claims were based, where those documents
24 contradicted the plaintiff’s allegations).

25 Here, as in *Datel*, Redwood has identified online publications at Exhibits A
26 and B that contradict New Plaintiffs’ allegations regarding the number of lenders
27 accessible to MindGeek. In the Related Cases, the New Plaintiffs assert claims
28 against Redwood and Colbeck Capital Management, LLC (“Colbeck”), and the

1 Related Cases misleadingly suggest Redwood and Colbeck were the only lenders to
2 MindGeek in 2011, 2013, and 2018. *See, e.g.*, K.A. Compl. ¶¶ 247 (alleging that
3 only Colbeck and Redwood provided MindGeek with “necessary financing” and
4 suggesting there were no other lenders) and 267 (alleging that “the rest of the
5 investment community was not willing to finance” MindGeek). Because Exhibits A
6 and B publicly reported in widely disseminated, national publications in 2020 that
7 MindGeek had had 125 lenders during the same period of time in which Redwood
8 and Colbeck provided financing, this fact undermines New Plaintiffs’ suggestions
9 that MindGeek did not have other lenders and could not obtain loans from others if
10 Redwood did not exist.

11 Accordingly, the Court should take judicial notice of Exhibits A and B.

12 **II. CONCLUSION**

13 For the foregoing reasons, Redwood respectfully requests that the Court take
14 judicial notice of the four documents described herein (Exhibits A through D).

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17 DATED: October 30, 2024

PAUL HASTINGS LLP

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19 By: /s/ James M. Pearl
JAMES M. PEARL

20 *Attorneys for Defendant Redwood*
21 *Capital Management, LLC*
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